

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4683 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BASIRBHAI GAFARBHAI MULTANI

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR KC SHAH, A.G.P., for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 02/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner Bashirbhai Gafarbhai Multani, brother of detenu Razakbhai Gafarbhai Multani, has brought under challenge the detention order dated 26th March, 1996 rendered by respondent No.1 under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter

referred to as "the PASA Act."

It may be noted that the detenu was committed to the prison on 2nd April 1996 under the impugned order of detention.

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter-alia indicate that detenu by himself and with the aid of his associates has been carrying on criminal and anti-social activities of beating innocent people, extorting money from them and creating atmosphere of fear in the concerned locality. Following offences have been registered against the detenu in Salabatpura Police Station and Limbayat Police Station, Surat, respectively.

CR No.312/95 U/ss.326, 324, 307, 323, 504, 114 of the I.P.C. r/w Section 135 of the Bombay Police Act. The matter is pending in the Court.

CR No. 1/96 U/ss.395, 323, 324, 504, 427 of the I.P.C. The matter is pending in the Court.

The first offence is stated to have been committed on 5.12.1995 and the second offence is stated to have been committed on 2.1.1996. In so far as both the offences are concerned, it may also be noted that the detenu has been charged for the offence punishable u/s.135 of the Bombay Police Act relying upon the relevant notification issued by the Commissioner of Police in that respect.

3. It has been recited that the detenu's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion the statement of the witnesses have been relied upon. They indicate about the incidents dated 22.12.1995, 1.1.1996 and 11.2.1996. The said incidents indicate threatening administered to the concerned witnesses, their beating in public place, extorting money from them and creating atmosphere of fear amongst the people of the locality.

4. It is on the aforesaid incident that the Detaining Authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the detenu. The detenu has been stamped as dangerous person within the meaning of Section 2(c) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The short ground on which the detenu would escape from the impugned order of detention is that although in respect of the first mentioned case as also the second case there has been a charge u/s.135 of the Bombay Police Act, the copy of notification under the said provision supplied to the detenu indicates that the notification was to be given effect to for the period between 3.1.1996 and 17.1.1996. The incident which is alleged against the petitioner with regard to the second CR (1/96) is dated 2.1.1996. The relevant applicable notification with regard to this CR has neither been relied upon by the Detaining Authority nor has been supplied to the detenu. It is in this respect that the reference has been made to a decision of this Court in the case of Dharmendra Bachubhai Trivedi V/s. State of Gujarat, Commissioner of Police, Vadodara City and the Superintendent, Special Jail, Porbandar, rendered on 11.10.1993 (Coram : S.M.Soni & S.D.Shah, JJ.), per Soni, J., in Special Civil Application No.491 of 1993. In that case also the notification relevant to the case in which the petitioner was involved there, was not relied upon and was not supplied. This Court observed-

"Though in the grounds of detention it is referred to as notification pertaining to the prohibition of carrying arms, in fact that notification pertains to prohibiting children and persons from palying cricket in streets and public streets in the sensitive area. Said notification at page 23 is dated 31.7.90, but it is not pertaining to prohibition of carrying arms. Mr.M.R.Raval, learned A.P.P., tried to rectify this error by saying that the notification prohibiting carrying of arms has been annexed at page 30. Notification at page 30 is dated 31.3.92. Alleged offence of detenu, for which the detaining authority has relied on the notification, is of 15.8.90. Therefore, the said notification relied on by Mr.Raval was not in existence at the relevant time. Thus, it is clear that the detaining authority has not supplied the document relied on by them and referred to in the grounds to the detenu. It is not only not supplied, but some other document has been supplied to the detenu, which has caused confusion in his mind in making representation. As necessary and relevant document, though relied on by the detaining authority, is not supplied,

the order of detention, in our opinion, is vitiated and is liable to be struck down."

6. It has been submitted by Mr. Shah, learned A.G.P. for the State that the time gap of the incident with regard to the second CR in the present case and the effect of the notification in question in the present case is hardly a couple of hours. That is neither here nor there. The consequence remains the same, namely, the notification which has been relied upon and supplied to the detenu is clearly not applicable to the second CR and, therefore, the aforesaid decision of the Division Bench of this Court would clearly apply to the facts of the present case.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of aforesaid decision of this court on the question of relying upon a notification which is not relevant and not supplying a copy of the relevant notification to the detenu, it is not necessary to deal with the other grounds. Hence, following order is passed:

The continued detention of the detenu is put an end to by declaring it as not legal and valid. The detenu Razakbhai Gafarbhai Multani shall be forthwith set at liberty if he is not required for any other case. Rule made absolute accordingly.

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